

Office of Financial Management
Indebtedness of State of Washington To Deceased Employees
Procedures on How to File Claims

Washington state law and administrative policies must be followed when requesting and paying final amounts owed to deceased employees. These procedures are written in accordance with state law and administrative policies issued by the Office of Financial Management. For administrative policies, refer to the *State Administrative and Accounting Manual* (SAAM), subsection 25.70.30 <http://www.ofm.wa.gov/policy/25.70.htm>. These procedures are designed to assist state payroll staff and claimants to more easily understand the detailed process and documents required.

These procedures include:

General Administrative Procedures

Appendices

- A. Court appointed executor, administrator, or personal representative
- B. Surviving spouse
- C. Other related claimants – children or parents
- D. Estates \$60,000 or less

Note: All procedures require the completion of an Internal Revenue Service (IRS) Form W-9 “Request for Taxpayer Identification Number and Certification”. The fill-in form can be found at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. This information will enable state agencies to complete Form 1099-Misc as required by the IRS if the gross distribution to the claimant is \$600 or more in a calendar year. A copy of the completed Form 1099-Misc must be furnished to the claimant or estate by January 31, of the year following payment of the proceeds or earlier if requested. This federal reporting will be in addition to the issuance of Forms W-2 “Wage and Tax Statement” as applicable for payroll transactions. Refer to the current IRS publication Instructions for Form 1099-Misc at <http://www.irs.gov/pub/irs-pdf/i1099misc.pdf> on how to complete a Form 1099-Misc.

Contact your agency’s assigned OFM accounting consultant, if there are any questions regarding these procedures.

I. General Procedures on How to Administer Deceased Employee Transactions

A. Follow the Washington State Administrative and Accounting Manual (SAAM) subsection 25.70.30. (<http://www.ofm.wa.gov/policy/25.70.htm>)

B. Obtain employee name and date of death.

C. Determine payroll status time of death.

Upon notice that an employee has died, the agency payroll office must be informed immediately. This allows any payroll preparation or distribution to be stopped in order that payroll taxes are deducted according to IRS rules and payment delayed until a proper claim is completed and processed.

If payroll distribution has already commenced as part of the normal distribution procedures, the agency would normally not be able to recall the payment. “Normal distribution” generally means manual distribution on payday at 8 am or later. For direct depositors, this would mean whenever the payroll system has forwarded the payment to the bank. If the direct deposit is before payday, the agency can attempt to reclaim the proceeds from the bank, but it is doubtful that the agency would be successful.

D. Determine the proper tax treatment of earnings paid out after death.

The payroll office must ensure that the appropriate federal employment taxes will be taken on any payroll issue. These regulations are in the Internal Revenue Service (IRS) Publications 15 - <http://www.irs.gov/pub/irs-pdf/p15.pdf> and 15-A – <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

Taxability:

Per IRS:

- All payroll payments made to a deceased employee (in the calendar year of death as well as future calendar years) are not subject to federal income tax.
- With the exception of sick leave buyouts, all wage payments (pay, overtime, comp time, annual leave, etc.) to a deceased employee are subject to social security and Medicare taxes in the calendar year of death, but not in subsequent years (Excluding payments to employees who have reached their respective maximums). The earning period being processed is not relevant – only the actual pay date.
- Sick leave buyouts made to deceased employees’ survivors are exempt from social security and Medicare taxes.

General Procedures – continued

If the current pay actions cannot be adjusted to prevent federal income tax (FIT) from being withheld, either of the following steps can be taken to provide the claimant payment that doesn't withhold FIT:

- (1) Cancel and reissue the payroll action stopping the FIT deduction, or
- (2) Release the net pay but provide the beneficiary an additional warrant/check made out in the name of the deceased employee for the FIT that had been deducted from the paycheck. This payment could be made from the applicable payroll revolving account, General Ledger (GL) code 1351 – Due from the Federal Government.

On the current quarter's Form 941, reduce the agency's FIT liability for the \$ FIT returned to the claimant and ask IRS for a refund. When the IRS tax refund is received, deposit to the payroll revolving account, GL1351, to reimburse the receivable. If this action is processed as a manual refund, complete the process by manually reducing the deceased employee's YTD FIT.

E. Review other payroll deductions for applicability before processing the final payment(s).

F. Complete the final pay action(s) - (always in the name of the deceased)

Remember to check if any amounts besides wages need to be paid including commute trip reduction cash incentives, travel, moving expense reimbursements, etc.

Payroll should be completed for the deceased employee and processed according to the regular processing calendars. Do not hold up processing because of claimant designation questions. Process the payroll in the appropriate payroll period.

If claimant questions will prevent a 100% distribution for some time (a month or longer), cancel the warrant or check to GL5145. Issue either a partial payment from GL5145, depending on the circumstances, or a full payment from GL5145 when a 100% distribution is possible. Refer to accounting procedures provided in SAAM at <http://www.ofm.wa.gov/policy/85.34.htm>.

Remember, never cancel a payment in the payroll system just because the payment is going to be held for later distribution. Only cancel warrants/checks in the payroll system if the calculations or tax withholding was wrong.

Payroll payments are always made out to the deceased employee BUT endorsed on the back to the claimant with a restricted endorsement provided in SAAM 25.70.30.g.

G. Review the Appendices of this document to determine the appropriate claimant to whom the deceased employee's final proceeds should be released. Generally, the claimant will be one of the following:

- **Court-appointed Executor, Administrator, or Personal Representative**
- **Surviving Spouse of the Deceased**
- **Children of the Deceased**
- **Parent Claimants**
- **Successor to Deceased per chapter 11.62 RCW**

H. For communication/distribution purposes, determine the potential claimants of money owed the deceased. Tips to locate possible claimant:

- (1) Agency staff should promptly (within reason) contact family or friends of the deceased to determine who might be the likely claimant of the deceased employee. If this is too difficult, reviewing the named beneficiaries on state life insurance or retirement designations may be of assistance. However, any such information can be used only to serve as an aid in locating possible claimants and would not indicate that those designated individuals would necessarily meet the state's disbursement rules for *payroll* amounts owed to deceased employees.
- (2) If the agency cannot locate a claimant, call the agency's assigned OFM accounting consultant for additional ideas for resources to find a possible claimant.

I. Collect documents as required depending on the method by which the amount due the deceased employee is being processed – Refer to Appendices A-D for specific directions.

Except for unusual situations, this document includes procedures to process claims for most usual categories of potential claimants.

J. Wills

State agencies are not to use Wills as a basis for distribution of amounts owed to a deceased employee. The state is not authorized to determine the legality or validity of any Will document that may be presented.

K. Trusts – Other Legal Directives

For advice on how to handle situations involving a trust or other legal directive, contact the agency's assigned OFM accounting consultant to determine the process to be used for these unique situations.

L. Marriage Relationships

Married v. Separated

For a surviving spouse to claim the amounts due the deceased, he or she must have been married to the deceased at the time of his or her death.

Even if the deceased employee and spouse were separated at the time of the deceased's death, they are still considered legally married unless divorced.

Common Law Marriages

Washington does not permit the creation of common law marriages – couples must obtain a license and the ceremony must be solemnized in order for the marriage to be valid. RCW 26.04.050. However, a common law marriage created in another state will be recognized as valid in Washington if the common law marriage was recognized as a valid marriage in the state where created. RCW 26.04.020(3). The following jurisdictions recognize common law marriages: Alabama; Colorado; District of Columbia; Georgia (if created before 1/1/97); Idaho (if created before 1/1/96); Iowa; Kansas; Montana; New Hampshire; Ohio (if created before 10/10/91); Oklahoma; Pennsylvania; Rhode Island; South Carolina; Texas; and Utah.

To determine the specific requirements needed to have a valid common law marriage, look to the law in the particular state where the "marriage" is formed and alleged to be recognized. As a general rule, however, living together in and of itself is not sufficient to have a relationship be a lawfully recognized common law marriage.

Same-Sex Marriages

While marriages between same sex couples are recognized in some states and Canada, these marriages are prohibited in Washington State and, even if permitted in another jurisdiction, will not be recognized as valid in Washington. RCW 26.04.020(1)(c)&(3). Because same sex marriages are not recognized in Washington, same sex partners married in another state or country cannot enter into a valid community property agreement.

M. Children

RCW 49.48.120 states that if there is no surviving spouse of the deceased employee, then his or her child or children can claim the amounts due the deceased, up to the \$10,500 limit. A child of the deceased means a biological or legally adopted child of the deceased. It does not include step-children.

Minor and Emancipated Children

If the deceased's child or children are the proper claimants and the children are minors (not yet 18 years of age), the amounts due deceased cannot be released to them. The amounts must be released to their legal guardian on their behalf. If a child is emancipated pursuant to chapter 13.64 RCW, then the child is considered an adult and can file the claim and receive the amounts due the deceased even though he or she is not yet 18 years of age. If the child is not a resident of Washington State, look to the law in the state where the child resides to determine the requirements for emancipation.

N. Parent Relationships

If the deceased's parent(s) is the appropriate claimant, and the parents are married then either parent can file the claim form and receive the amounts due the deceased employee up to \$10,500. If the deceased's parents are divorced, then each parent must file a claim form and will receive half of what is owed the deceased up to \$10,500 total or \$5,250 for each parent.

O. Multiple Claimants

If more than one claimant is to receive the final compensation, divide proceeds by canceling the warrant or check payable to the deceased to the appropriate payroll revolving fund (**never cancel in the payroll system unless the pay is wrong**). Cancel to GL5145 and reissue vendor payment(s) in the name of the deceased to all the claimants in the correct proportions, providing each has presented the complete correct set of documents. Claimants may, by written authorization, direct payment on their behalf to another appropriate claimant. Pay from the applicable revolving fund, using GL5145.

P. Tribal Court Actions

If a tribal court is involved in an inheritance case and an agency is presented with a tribal court order, contact the agency's assigned OFM accounting consultant for assistance.

Q. Prepare/distribute IRS Form 1099-Misc to claimants and IRS at calendar year end if applicable.

Follow IRS current instructions and forms to report the gross pay distributions of amounts for deceased employees to their beneficiaries if the total amount paid out in a calendar year is \$600 or more. The IRS forms and instructions can be found at:

Form 1099-Misc and Instructions:

<http://www.irs.gov/pub/irs-pdf/f1099misc.pdf>

<http://www.irs.gov/pub/irs-pdf/i1099misc.pdf>

Form 1096 (fill-in):

<http://www.irs.gov/pub/irs-pdf/f1096.pdf>

R. When Distributions Cannot be Made to Claimants

Contact the Dept of Revenue, Unclaimed Property to determine what information must be included before transmitting unclaimed amounts for deceased employees that remain undistributed after one year, including any minimum dollar amounts.

Appendix A

Court appointed Executor, Administrator, or Personal Representative

If an executor, administrator, or personal representative for the estate of the deceased has been appointed by a court, all amounts owed, including anything in excess of \$10,500 are payable to the deceased and transmitted as requested to the executor, administrator, or personal representative.

Documents Required Before Payment is Made:

1. Certified copy of the deceased employee's death certificate
2. Copy of the court order appointing the personal representative
3. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Note:

A Claim of Indebtedness form should **not** be completed by an executor, administrator, or personal representative.

Appendix B

Surviving Spouse of the Deceased

If the court has not appointed an executor, administrator, or personal representative, then a surviving spouse may seek payment under one of the following three scenarios.

- 1. If there is a community property agreement between the deceased and the surviving spouse that meets the requirements of [RCW 26.16.120](#), then:**

The agency shall the total of the deceased's pay or that portion governed by the community property agreement to the surviving spouse.

Documents Required:

1. Certified copy of the deceased employee's death certificate
2. Copy of the community property agreement between the deceased employee and his or her surviving spouse.
3. Certified copy of the marriage license.
4. Completed Claim for Indebtedness of State of Washington to Deceased Employees.
Either the affidavit or declaration format is acceptable.
5. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

- 2. If no community property agreement exists, then the agency may pay up to \$10,500 once the surviving spouse has completed a Claim for Indebtedness form.**

Documents Required:

1. Certified copy of the deceased employee's death certificate
2. Certified copy of the marriage license
3. Completed Claim for Indebtedness of State of Washington to Deceased Employees.
4. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Surviving Spouse of the Deceased - continued:

3. If no community property agreement exists, and the surviving spouse has completed the Claim for Indebtedness form, but the amount owed the deceased employee is above \$10,500, the agency may not pay the amount owed the deceased employee in excess of \$10,500 unless:

- a) The requirements of Appendix D are followed for estates less than \$60,000; or**
- b) A personal representative for the deceased employee's estate has been appointed**

Note: The state cannot use the beneficiary designations in deceased employee's Wills, state insurance, or state retirement by which to process disbursements.

Documents Required:

- 1. Certified copy of the deceased employee's death certificate
- 2. Other documents as appropriate
- 3. An IRS form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Appendix C

Other Relative Claimants – Children or Parents of the Deceased

The agency may pay the amount owed the deceased employee up to \$10,500 to the surviving child or children, or if there are no children, then to the surviving parent or parents of the deceased employee under the following circumstances:

- 1) No executor, administrator or personal representative of the estate has been appointed.
- 2) The claimant has completed a Claim for Indebtedness form.

Amounts owed to surviving children who are minors and not emancipated pursuant to chapter 13.64 RCW can only be paid to a legal guardian on the child's behalf. The legal guardian must also complete the Claim for Indebtedness form on behalf of the surviving child or children.

Documents Required:

1. Certified copy of the deceased employee's death certificate
2. Completed Claim for Indebtedness of State of Washington to Deceased Employees
3. Proof of legal guardianship, if minor children are claimants
4. An IRS form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Appendix D

Estates \$60,000 or Under

For estates valued at \$60,000 or less, chapter 11.62 RCW allows an estate to be distributed upon the presentation of an affidavit. If the agency is presented with an affidavit meeting all the requirements of RCW 11.62.020, it shall pay the total amount owed (the \$10,500 limit does not apply) the deceased to the successor who has completed the affidavit. See SAAM 25.70.30 for the specific requirements of the affidavit. The applicable statutes are attached.

Documents Required:

1. Certified copy of the deceased employee's death certificate
2. Original Affidavit (as relates to RCW 11.62.010-.020). Mail affidavit as instructed by the agency.
3. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).